



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,583	07/09/2003	Robert D. Harris	RDH-44058	1309

26252 7590 09/13/2005

KELLY LOWRY & KELLEY, LLP
6320 CANOGA AVENUE
SUITE 1650
WOODLAND HILLS, CA 91367

EXAMINER

NGUYEN, TAM M

ART UNIT	PAPER NUMBER
----------	--------------

3764

DATE MAILED: 09/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No. 10/616,583	Applicant(s) HARRIS, ROBERT D.	
	Examiner Tam Nguyen	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7-9-03</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Objections

1. Claim 1 is objected to because of the following informalities:

In claim 1, on line 6, appears the phrase "to the treadmill". It should be restated as --to a treadmill--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3 and 4 rejected under 35 U.S.C. 102(b) as being anticipated by O'Neil (2,017,128).

2. As to claims 1, 3 and 4, O'Neil discloses an exercise device comprising a harness (51), multiple resistance bands (45,48) comprised of a resiliently flexible material (48) having a first end coupled to the harness and a second end coupled to an object/rear stanchion (31) that is fixed relative to a treadmill wherein resistance to forward movement of a user occurs as the user operates the non-motorized treadmill (see Figs. 1 & 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3764

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 5, 6, 8, 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neil '128 in view of Lee et al. (6,123,649).

3. As to claim 2, O'Neil discloses an exercise device as described above. O'Neil does not disclose that the harness is defined as an elongated member having opposed ends adapted for engagement together around the waist of the user. Lee et al. disclose a similar exercise device that comprises a harness (314) is defined as an elongated member having opposed ends adapted for engagement together around the waist of the user (see Fig. 19). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to substitute O'Neil's harness with Lee's harness to provide the user with a more secure fit for improved comfort during exercise.

4. As to claim 5, O'Neil discloses an exercise device as described above (see discussion of claim 1). O'Neil does not disclose that the second end of the resistance band is coupled to a fixed object in close proximity to the treadmill. Lee et al. disclose a similar exercise device that includes resistance bands (310,312) having a first end connected to a harness (314) and a second end connected to a fixed object (304) in close proximity to the treadmill (see Fig. 19). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine Lee's teaching of having the resistance band be connected to a fixed object to O'Neil's device such that the user can use the resistance bands for various exercises with or without a treadmill.

5. As to claims 6, 8, 9 and 11, O'Neil discloses an exercise device comprising a non-motorized treadmill, a harness (51), multiple resistance bands (45,48) comprised of a resiliently flexible material (48) having a first end coupled to the harness and a second end coupled to an object/rear stanchion (31) that is fixed substantially perpendicular relative to a support structure of the treadmill wherein resistance to forward movement of a user occurs as the user operates the non-motorized treadmill (see Figs. 1 & 2). O'Neil does not disclose that the harness is defined as an elongated member having opposed ends adapted for engagement together around the waist of the user. Lee et al. disclose a similar exercise device that comprises a harness (314) is defined as an elongated member having opposed ends adapted for engagement together around the waist of the user (see Fig. 19). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to substitute O'Neil's harness with Lee's harness to provide the user with a more secure fit for improved comfort during exercise.

Claims 7 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neil '128 in view of Lee et al. (6,123,649) in further view of Barrett (1,016,729).

6. As to claims 7 and 12-14, O'Neil and Lee et al disclose a modified exercise device as described above (see discussion of claim 6). O'Neil further discloses that the support structure of the treadmill includes parallel rails (11) and a continuous belt (16) that is manually rotated (see Fig. 1). O'Neil does not disclose a leading roller or a trailing roller. Barrett discloses a similar exercise device that includes a treadmill having front and rear rollers (6,7) (see Fig. 2). At the time of the invention, it would have been

obvious to a person of ordinary skill in the art to combine Barrett's rollers with O'Neil's treadmill to provide a smooth and consistent rotation of the continuous belt.

7. As to claim 10, O'Neil and Lee et al. disclose a modified exercise device as described above (see discussion of claim 6). O'Neil does not disclose that the second end of the resistance band is coupled to a fixed object in close proximity to the treadmill. Lee et al. disclose a similar exercise device that includes resistance bands (310,312) having a first end connected to a harness (314) and a second end connected to a fixed object (304) in close proximity to the treadmill (see Fig. 19). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine Lee's teaching of having the resistance band be connected to a fixed object to O'Neil's device such that the user can use the resistance bands for various exercises with or without a treadmill.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Wroclawsky '427 and Eldridge '830 each disclose an exercise device that comprises a treadmill and a harness having resilient bands that are attached to a user for increased resistance.

Clark '392, Birdwell '548, Rebman '014, Barnard et al. '029 are representative of the prior art that disclose harnesses having flexible cords that are attached to fixed objects to provide resistance exercises.

Art Unit: 3764


Lemire '510 and Thomascik disclose harnesses having multiple resilient bands attached thereto that are used in resistance exercises.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 571-272-4979. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4778. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 8, 2005


STEPHEN R. CROW
PRIMARY EXAMINER
ART UNIT 332